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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1905.

No. 116.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

NEW YORK AND CUBA MAIL STEAMSHIP COMPANY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED NOVEMBER 3, 1904.

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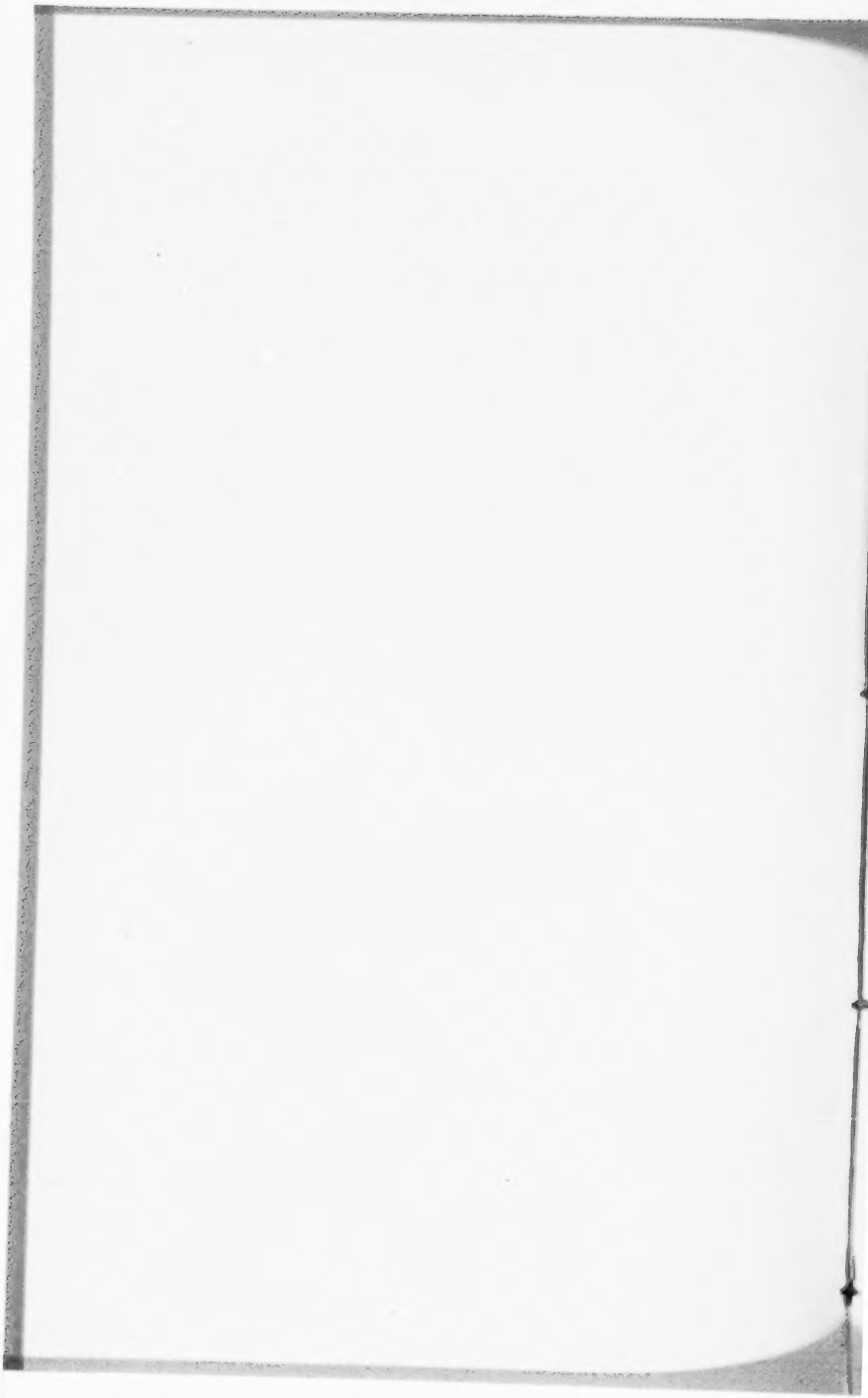

1 United States District Court, Southern District of New York.

NEW YORK AND CUBA MAIL STEAMSHIP COMPANY, claimant and defendant in error,
against
THE UNITED STATES OF AMERICA, RESPONDENT and plaintiff in error.

Statement.

1902. Nov. 21. Petition filed.
1903. Jan. 30. Demurrer filed.
Oct. 21. Demurrer overruled. Opinion, Holt, J.
Dec. 22. Filed decision on demurrer.
23. Judgment roll filed and docketed. Judgement against the United States for $265.32.
1904. June 2. Filed petition for writ of error. Writ allowed.
2. Filed assignment of errors.
3. Filed citation.

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judges of the District Court of the United States for the Southern District of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, or some of you, between New York and Cuba Mail Steamship Company, claimant, against The United States, respondent, a manifest error hath happened, to the great damage of the said The United States, respondent, as is said and appears by said complaint: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the 30th day of June, 1904, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable MELVILLE W. FULLER, judge of the District Court of the United States for the Southern District of New York, this 2nd day of June in the year of our Lord one thousand nine hundred and four and of the Independence of the United States the one hundred and twenty-eighth.

[L. S.] THOS. ALEXANDER,
Clerk of the District Court of the United States of America, for the Southern District of New York in the Second Circuit.

The foregoing writ is hereby allowed.

GEO. C. HOLT, *U. S. D. J.*

2½ UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Thomas Alexander, clerk of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from two to twenty-seven, inclusive, contain a true and complete transcript of the record and proceedings had in the said court in the cause of The United States of America, plaintiff in error, against New York and Cuba Mail Steamship Company, defendant in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 24th day of October, in the year of our Lord one thousand nine hundred and four and of the Independence of the United States the one hundred and ninth.

THOS. ALEXANDER,
Clerk.

(Indorsed:) 4–132. Supreme Court of the United States. The United States, plaintiff in error, vs. New York and Cuba Mail Steamship Company, defendant in error. Writ of error. Henry L. Burnett, U. S. attorney, attorney for plaintiff in error. Due service of a copy of the within writ of error is hereby admitted this 3 day of June, 1904. Curtis, Mallet-Prevost & Colt, attorney for defendant in error. Filed June 3, 1904.

3 *Petition.*

District Court of the United States, Southern District of New York.

NEW YORK AND CUBA MAIL STEAMSHIP Company, petitioner,
against
THE UNITED STATES OF AMERICA.

New York and Cuba Mail Steamship Company brings this its petition against the United States, and respectfully shows to the court as follows:

First. That at all times hereinafter mentioned petitioner was, and still is, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and had, and still has, its principal place of business in the city, county, and State of New York, and was, and still is, a citizen of the United States, and is engaged in the business of carrying passengers and freight between ports of the United States and foreign ports or places.

4 Second. That James E. Ward and Company, incorporated, is the general agent of petitioner, and that, as such agent, said James E. Ward and Company, for and on behalf of your petitioner, made out and delivered to the collector of the port of New York, the outward foreign manifests of the cargoes of the vessels of petitioner required by section 4197 of the Revised Statutes of the United States, to be so delivered before the vessel bound for a foreign port or place is granted clearance from a port of the United States.

Third. That, at the times of delivering to said collector the hereinafter mentioned outward foreign manifests of cargo, there was in force an act of Congress, approved June 13, 1898, entitled "An act to provide ways and means to meet war expenditures, and for other purposes," which purported to impose a tax on certain documents, including outward foreign manifests of cargo, by requiring that internal-revenue documentary stamps of various face values be purchased, affixed to such documents and canceled, and that the requirements of said act as to the amounts to be affixed to outward foreign manifests of cargo were as follows:

"Manifest for custom-house entry or clearance of the cargo of any ship, vessel, or steamer for a foreign port.

"If the registered tonnage of such ship, vessel, or steamer does not exceed three hundred tons, one dollar.

"Exceeding three hundred tons and not exceeding six hundred tons, three dollars.

"Exceeding six hundred tons, five dollars."

That it was further provided by sec. 7 of the said act:

5 "That if any person or persons shall make, sign or issue, or caused to be made, signed or issued, any instrument, document, or paper of any kind or description whatsoever, without the same being duly stamped for denoting the tax hereby imposed thereon, or without having thereon an adhesive stamp to denote said tax, such person or persons shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than one hundred dollars, at the discretion of the court, and such instrument, document, or paper as aforesaid, shall not be competent evidence in any court."

That said act being in force, under compulsion and through fear of criminal prosecution, and in order to obtain clearance papers which could not have been procured without the delivery to the collector of the port of New York of outward foreign manifests of cargo stamped as aforesaid, and without which clearance papers the vessels hereinafter named would have been prevented from sailing, or would have become liable for the penalty imposed by section 4197 of the Revised Statutes of the United States, said James E. Ward & Company, for and on behalf of your petitioner and as such general agents as aforesaid, purchased and affixed to the said outward foreign manifests of cargo and cancelled internal revenue documentary stamps of the United States of the face value of two hundred and forty dollars ($240), as appears more fully by the exhibit hereto annexed and made a part of this petition and marked "Exhibit A," which contains the name of the vessel, the date of delivery to said collector of the outward foreign manifests of cargo, the alleged tax on which is sought to be recovered, and the face value of the documentary internal-revenue stamp affixed thereto.

6 That said stamps were purchased from Walter H. Stiner, a dealer in internal-revenue stamps at 27 William street, New York City, on various days subsequent to January 1, 1900. Your petitioner further alleges on information and belief that the said Walter H. Stiner had himself purchased them on the same days respectively from the collector of internal revenue for the second New York district and that the proceeds of the sale of said stamps were thereafter by said collector duly paid over to the United States.

Fourth. That prior to the beginning of this suit, and on or about the 13th day of November, 1901, said James E. Ward & Company, for and on behalf of petitioner and as such general agent as aforesaid, pursuant to the laws of the United States and the regulations of the Treasury Department in such cases made and provided, made an application in writing to the United States Commissioner of Internal Revenue to remit, refund, and pay back to said James E. Ward & Company, as such agents as aforesaid, the alleged tax on said outward foreign manifests of cargo, on the ground that the provisions of said war revenue act imposing an internal revenue tax upon manifests for clearance of cargoes of goods exported from a port or place in the United States to any foreign port or place is unconstitutional and in conflict with that provision of Article I, section 9, of the Constitution of the United States which provides that "No tax or duty shall be laid on articles exported from any State."

A copy of the said application for refund is hereto annexed, made part of this petition and marked "Exhibit B."

7 Fifth. That said United States Commissioner of Internal Revenue finally, on or about the 19th day of March, 1902, denied and rejected the aforesaid application of James E. Ward & Company, and refused to remit, refund, or pay back the said alleged tax, or any part thereof, and sent to said James E. Ward & Company a written notice of such rejection, a copy of which notice is hereunto annexed and marked "Exhibit C," and said Commissioner also sent a notice of such rejection to petitioner's attorneys, a copy of which is annexed and marked "Exhibit D."

Sixth. That as petitioner is advised, and verily believes, the said alleged tax was wholly illegal, null, void, and of no force or effect, for that the provisions of the aforesaid act of Congress under which it was sought to impose and collect the said alleged tax or duty is unconstitutional and void, and especially are in direct violation of the provisions of Article I, section 9, clause 5, of the Constitution of the United States, which is as follows:

"No tax or duty shall be laid on articles exported from any State."

Wherefore your petitioner demands judgment against the United States for the sum of two hundred and forty dollars ($240) and the cost of this suit.

THE NEW YORK AND CUBA MAIL STEAMSHIP COMPANY,
[SEAL.] HENRY P. BOOTH, *President, Petitioner.*

Curtis, Mallet-Prevost & Colt, attorneys for petitioner; office and post-office address, 30 Broad street, borough of Manhattan, city and State of New York.

8 STATE OF NEW YORK,
County of New York, ss:

Henry P. Booth, being duly sworn, deposes and says: That he is the president of the New York and Cuba Mail Steamship Company, the petitioner herein; that he has read the foregoing petition and knows the contents thereof, and that the same is true to the knowledge of deponent except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true. Deponent further says that the reason why this verification is not made by the

petitioner is that the petitioner is a corporation. That the sources of deponent's information and the ground of his belief as to those facts not stated upon his own knowledge are reports received by deponent and general acquaintance with the business of said petitioner had by deponent as an officer thereof.

HENRY P. BOOTH.

Sworn to before me this 19th day of November, 1902.

[SEAL.] WHIDDEN GRAHAM,
Notary Public.

9

EXHIBIT A.

List of vessels with date of delivery of manifests to the collector and face value of internal-revenue documentary stamp attached thereto.

Name of vessel.	Date of delivery of manifest.	Face value of stamp.
S. S. "Seneca"	Apr. 12th, 1901	$5.00
S. S. "Morro Castle"	Apr. 13th, 1901	$5.00
S. S. "Yucatan"	Apr. 17th, 1901	$5.00
S. S. "Ithaka"	Apr. 19th, 1901	$5.00
S. S. "Santiago de Cuba"	Apr. 20th, 1901	$5.00
S. S. "Mexico"	Apr. 20th, 1901	$5.00
S. S. "Seguranca"	Apr. 24th, 1901	$5.00
S. S. "Saratoga"	Apr. 25th, 1901	$5.00
S. S. "Mantanzas"	Apr. 26th, 1901	$5.00
S. S. "Morro Castle"	Apr. 27th, 1901	$5.00
S. S. "Havana"	May 2nd, 1901	$5.00
S. S. "Niagara"	May 1st, 1901	$5.00
S. S. "Mexico"	May 4th, 1901	$5.00
S. S. "Orizaba"	May 4th, 1901	$5.00
S. S. "Esperanza"	May 8th, 1901	$5.00
S. S. "Santiago"	May 9th, 1901	$5.00
S. S. "Seneca"	May 10th, 1901	$5.00
S. S. "Morro Castle"	May 11th, 1901	$5.00
S. S. "Mantanzas"	May 14th, 1901	$5.00
S. S. "Yucatan"	May 15th, 1901	$5.00
S. S. "Cienfuegos"	May 16th, 1901	$5.00
S. S. "Ithaka"	May 17th, 1901	$5.00
S. S. "Ydun"	May 17th, 1901	$5.00
S. S. "Mexico"	May 18th, 1901	$5.00
S. S. "Seguranca"	May 22nd, 1901	$5.00
S. S. "Saratoga"	May 23rd, 1901	$5.00
S. S. "Morro Castle"	May 25th, 1901	$5.00
S. S. "Santiago de Cuba"	May 29th, 1901	$5.00
S. S. "Havana"	May 29th, 1901	$5.00
S. S. "Niagara	May 31st, 1901	$5.00
10 S. S. "Mexico"	June 1st, 1901	$5.00
S. S. "Esperanza	June 5th, 1901	$5.00
S. S. "Santiago"	June 6th, 1901	$5.00
S. S. "Seneca"	June 7th, 1901	$5.00
S. S. "Morro Castle"	June 8th, 1901	$5.00

EXHIBIT A.—*List of vessels with date of delivery of manifests to the collector and face value of internal-revenue documentary stamp attached thereto*—Continued.

Name of vessel.	Date of delivery of manifest.	Face value of stamp.
S. S. "Orizaba"	June 12th, 1901	$5.00
S. S. "Mexico"	June 15th, 1901	$5.00
S. S. "Cienfuegos"	June 15th, 1901	$5.00
S. S. "Seguranca"	June 15th, 1901	$5.00
S. S. "Monterey"	June 19th, 1901	$5.00
S. S. "Ydun"	June 19th, 1901	$5.00
S. S. "Saratoga"	June 20th, 1901	$5.00
S. S. "Mantanzas"	June 21st, 1901	$5.00
S. S. "Morro Castle"	June 22nd, 1901	$5.00
S. S. "Yucatan"	June 26th, 1901	$5.00
S. S. "Santiago de Cuba"	June 27th, 1901	$5.00
S. S. "Niagara"	June 28th, 1901	$5.00
S. S. "Mexico"	June 29th, 1901	$5.00
		$240.00

EXHIBIT B.

Claim for refund of internal-revenue tax paid on manifests for clearance of cargoes to a foreign port or place.

STATE OF NEW YORK,
City and County of New York, ss:

Henry P. Booth, president of James E. Ward & Company, Incd., agents for the New York & Cuba Mail Steamship Company, of the city of New York, and the State and county aforesaid, being duly sworn according to law, deposes and says: That upon the twelfth day of April, A. D. 1901, and from time to time thereafter there were affixed and cancelled by said James E. Ward & Co. internal-revenue stamps to
11 the amount of $5.00 to a large number of manifests for clearance of cargoes of goods, merchandise, or effects, exported from a port or place in the United States to a foreign port or place, in accordance with the provisions of schedule A of the war-revenue act, approved June 13, 1898, and the said James E. Ward & Co. was required by the Commissioner of Internal Revenue to pay and did pay the same, amounting in the aggregate to $240.00, which amount deponent verily believes should be refunded for the following reasons, viz:

That the provision of said war-revenue act imposing an internal-revenue tax upon manifests for clearance of cargoes of goods exported from a port or place in the United States to any foreign port or place is in conflict with that provision of Article I, section 9, of the Constitution of the United States which provides that "No tax or duty shall be laid on articles exported from any State."

And this deponent now claims that by reason of the payment of the said sum of $240.00 he is justly entitled to have the sum of $240.00 refunded, and he now asks and demands the same, or such greater amount

as the Commissioner of Internal Revenue may find to have been erroneously paid or to be refundable under remedial statutes.

And this deponent further makes oath that he has not heretofore presented any claim for the refunding of the above amount or any part thereof.

HENRY P. BOOTH.

Sworn and subscribed before me this 13th day of November, A. D. 1901.

CHARLES E. KEMPE,
Notary Public.

12 STATE OF NEW YORK,
City and County of New York, ss:

Henry P. Booth, president of James E. Ward & Company, incorporated, agents for the New York & Cuba Mail Steamship Company, of the city of New York, and the State and county aforesaid, being duly sworn according to law, deposes and says that he is president of James E. Ward & Company, a corporation, and that said corporation is general agent for the New York and Cuba Mail Steamship Company, and that the annexed statement, showing the number of manifests for clearance of cargoes exported to foreign ports on the vessels cleared from the port of New York by said James E. Ward & Company, agents, with the names of the vessels for which the manifests were issued and the dates on which said export manifests were stamped, is in all respects just and true, and that internal-revenue stamps to the value of five dollars were duly purchased from Walter Stiner, of 27 William street, New York, and were affixed to each of said manifests and canceled by said James E. Ward & Company, agents, aggregating $3,195.00.

And this deponent further deposes and says that the stamped copies of the manifests specified in the annexed statement are now on file in the office of the collector of customs, port of New York, and are part of his official records, and that the facts set forth in said annexed statement can be verified by a deputy collector of internal revenue or other authorized person by examining the records of said collector of customs and the office records of James E. Ward & Company.

HENRY P. BOOTH.

Sworn and subscribed to before me this 13th day of November, 1901.

CHARLES E. KEMPE,
Notary Public.

13 STATE OF NEW YORK,
City and County of New York, ss:

Walter Stiner, doing business at No. 27 William street, in the city of New York, being duly sworn, deposes and says: That he sold to James E. Ward & Company, agents for the New York and Cuba Mail Steamship Company, the internal-revenue stamps specified in annexed statement, and that said stamps were duly purchased from the collector of internal revenue for the second New York district by deponent.

WALTER STINER.

Sworn and subscribed to before me this 13th day of November, 1901.

ROBERT E. TIBBITS,
Notary Public.

EXHIBIT C.

J. B. T. F.

R. W., Jr.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, March 19, 1902.

J. L. A.

In correspondence on this subject quote the above initials.

JAMES E. WARD & COMPANY, INCORPORATED,
113 Wall street, New York City.

SIRS: The claims of the New York and Cuba Mail Steamship Company for the refunding of $2,955.40 and $240, amounts paid for
14 documentary stamps used on 639 manifests for custom-house entries or clearances on the cargoes of vessels for foreign ports have been examined and rejected.

As regards 155 of these manifests, the stamps were purchased and affixed prior to May 2, 1899, and the claims were not presented until May 2, 1901. So far as the claims relate to the stamps used upon these manifests, they are barred by the act of May 12, 1900, which provides that no allowance shall be made for documentary stamps unless the claims are presented within two years after the purchase of the stamps from the Government.

As regards the balance of the stamps, no evidence is filed showing when they were purchased from the Government, and under the supposition that a portion at least were purchased subsequent to May 2, 1899, the claim has been considered upon its merits.

This tax was legally collected under the provisions of Schedule A of the act of June 13, 1898, and until the provision under which it was paid is declared unconstitutional by the United States Supreme Court, this office has no right to question its constitutionality.

Respectfully,

J. W. YERKES, *Commissioner.*
J. T. B.

J. F.

15 EXHIBIT D.

A. W. W.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, March 20th, 1902.

J. L. A.

In correspondence on this subject quote the above initials.

CURTIS, MALLET-PREVOST & COLT,
Attorneys & Counsellors at Law,
30 Broad street, New York City.

SIRS: The claims of the New York and Cuba Mail Steamship Company for the refunding of $2,955.40 and $240, amounts paid for docu-

mentary stamps used on 639 manifests for custom-house entries or clearances of cargoes of vessels for foreign ports, have been examined.

As regards 155 of these manifests, the stamps were purchased and affixed prior to May 2, 1899, and the claims were not presented until May 2, 1901. So far as the claims relate to the stamps used upon these manifests they are barred by the act of May 12th, 1900, which provides that no allowance shall be made for documentary stamps unless the claims are presented within two years after the purchase of the stamps by the Government.

As regards the balance of the stamps, no evidence is filed showing when they were purchased from the Government, but, under the
16 supposition that a portion at least were purchased subsequent to May 2, 1899, the claims have been considered upon their merits.

The taxes were paid under the following paragraph of Schedule A, act of June 13, 1898:

"Manifests for custom-house entry or clearance of the cargo of any ship, vessel, or steamer for a foreign port—

"If the registered tonnage of such ship, vessel, or steamer does not exceed three hundred tons, one dollar.

"Exceeding three hundred tons, and not exceeding six hundred tons, three dollars.

"Exceeding six hundred tons, five dollars."

Refund is claimed on the ground that this provision is unconstitutional, being in violation of the clause in the Constitution which prohibits laying a tax on articles exported, and the decision of the Supreme Court in the case of Fairbanks vs. the United States, 181 U. S., 283, is referred to.

It was decided in that case that a tax upon export bills of lading was unconstitutional. The validity of taxes on manifests for clearance of cargoes to a foreign port was not before the court.

This office would not be justified in allowing the claims on the basis of the decision in the Fairbanks case. The presumption is in favor of the constitionality of an act of Congress, and this office has no right to question the validity of the act under which the taxes were paid.

The claims have therefore been rejected.

Respectfully,

J. W. YERKES,
Commissioner.

J. F.

(Endorsed:) Petition. Filed Nov. 21st, 1902.

17 *Demurrer.*

District Court of the United States, Southern District of New York.

NEW YORK AND CUBA MAIL STEAMSHIP COMPANY, petitioner,
against
THE UNITED STATES OF AMERICA, DEFENDANT.

The United States above named by its attorney, Henry L. Burnett, demurs to the petition of the above-named claimant herein on the ground:

First. That said petition does not state facts sufficient to constitute a claim on the part of the claimant against the United States.

Wherefore the United States demands that said petition be dismissed.

HENRY L. BURNETT,
United States Attorney, Attorney for Plaintiffs,
Office and P. O. Address, Room 50, P. O. Building,
New York City.

(Endorsed:) Demurrer. Filed Jan'y 30th, 1903.

19 United States District Court, Southern District of New York.

NEW YORK AND CUBA MAIL STEAMSHIP COMPANY, petitioner,
against
THE UNITED STATES OF AMERICA, DEFENDANT.

Curtis, Mallet-Prevost & Colt (Wm. Edmond Curtis, of counsel) for petitioner.

Henry L. Burnett, U. S. attorney, and Charles D. Baker, assistant U. S. attorney, for defendant.

HOLT, J.:

This is a demurrer to a petition in a suit against the United States in this court under the act of March 3, 1887, commonly known as the Tucker Act. The action is brought to recover $240, the amount expended by the petitioner for stamps affixed to manifests of cargoes exported from New York to Cuba in the steamers owned by the petitioner. The war tax of June 13, 1898, imposed the following stamp taxes on manifests:

"Manifest for custom-house entry or clearance of the cargo of any ship, vessel, or steamer for a foreign port.

"If the registered tonnage of such ship, vessel, or steamer does not exceed three hundred tons, one dollar.

"Exceeding three hundred tons and not exceeding six hundred tons, three dollars.

"Exceeding six hundred tons, five dollars."

The petition alleges that such tax on manifests violated the provision of the Constitution of the United States that "no tax or duty shall be laid on articles exported from any State." The sole question
20 raised by the demurrer is whether such provision is unconstitutional.

The United States Supreme Court decided, in the case of Fairbank v. United States (181 U. S., 283), that the stamp tax imposed by the same act on foreign bills of lading was, in substance and effect, equivalent to a tax on the articles included in the bill of lading; that it was therefore a tax or duty on exports, and was unconstitutional.

I am unable to see any difference in principle between a stamp tax on a manifest and a stamp tax on a bill of lading. A manifest is a declaration of the entire cargo; a bill of lading is a declaration of a specific part of the cargo. A manifest is essentially a summary of all the bills of lading. If there is any distinction, it seems to me that the constitutional prohibition of a tax on a foreign bill of lading applies with still greater

force to a tax on a manifest. Previous to the Harter Act, there was, so far as I am aware, no statute of the United States requiring bills of lading to be given. They were universally given, but they were a mere matter of business convenience, and were based exclusively on contract. The statutes of the United States, however, have always required that a sworn manifest be furnished by the master upon the clearance of any vessel from this country for a foreign port. (U. S. R. S., sec. 4197.) A manifest is one of the ship's papers, which must be presented to the collector upon the entry of any vessel into the United States. (U. S. R. S., sec. 2790.) It is a part of the ship's papers, essential, on all voyages, for the protection of the ship and the owners of the cargo, which it
21 is the duty of a master to take on board and carefully preserve. (2 Parsons on Shipping, p. 3.) A voyage made without the regular ship's papers is presumably illegal. In case of a seizure in time of war, the absence of ship's papers is presumptively an adequate ground for condemnation. (2 Parsons on Shipping, 476.) Prize cases, when no claimant appears, are ordinarily heard upon the ship's papers and the evidence taken in preparatory. (2 Parsons on Shipping, 473.) Any concealment of spoliation of ship's papers is a fact of great weight in prize cases. (2 Parsons on Shipping, 475.) In short, while a bill of lading is ordinarily merely a convenient commercial instrument, a manifest of the cargo is absolutely essential to the exportation of property in vessels at all. Congress could absolutely put an end to any exportation whatever by a sufficiently high tax on manifests, if it had the power to impose such a tax. If, therefore, a stamp tax on a bill of lading is a tax upon the property exported, a stamp tax on a manifest seems to me to be still more clearly such a tax.

Moreover, in the dissenting opinion in Fairbank v. United States, supporting the view that a tax on a bill of lading was a tax on a paper or document, and not on the property exported, much stress was laid on the fact that the tax imposed by the act on a bill of lading was an unvarying amount, ten cents, upon each bill, irrespective of the value of the property. The opinion states, "If Congress had graduated the stamp duty according to the quantity or value of the articles exported, there might have been ground for holding that the purpose and the
22 necessary result was to tax the property, and not the vellum, parchment, or paper on which the bill of lading was written or printed" (p. 317). The provision of the act imposing a tax on manifests did graduate the stamp duty, to a certain extent, according to the capacity of the ship to increase the quantity or value of the articles exported. If the registered tonnage of the ship did not exceed three hundred tons, the tax was one dollar; if it exceeded three hundred tons and did not exceed six hundred tons, it was three dollars; and if it exceeded six hundred tons, it was five dollars. Without laying too much stress, however, upon this consideration, I think that the essential character of the stamp tax on manifests was that of a tax on exports, in the same sense in which a stamp tax on a bill of lading was a tax on exports.

My conclusion is that the demurrer should be overruled, with leave to the defendant to answer within twenty days.

October 21st, 1903.

G. C. H.

(Endorsed:) Opinion, Holt, J.

23 At a stated term of the District Court of the United States, held in and for the Southern District of New York, at the post-office building in the borough of Manhattan, in the city of New York, on the 22nd day of December, 1903.

Present: Hon. George C. Holt, district judge.

NEW YORK AND CUBA MAIL STEAMSHIP COMPANY, petitioner,
against
THE UNITED STATES OF AMERICA, DEFENDANT.

This cause having been regularly brought on for argument upon the issues of law formed by the petition herein and the demurrer of the defendant at a stated term of this court, held in and for the Southern District of New York, at the post-office building in the borough of Manhattan, city of New York, on the 14th day of October, 1903, and the said cause having been duly argued by Charles Duane Baker, esq., assistant United States attorney, of counsel for the defendant in support of the demurrer, and by William E. Curtis, esq., of counsel for the petitioner in opposition to said demurrer, and due deliberation having been had thereon, it is, on motion of Curtis, Mallet-Prevost & Colt, attorneys for petitioner,

24 Ordered, adjudged, and decreed that the said demurrer be, and the same hereby is, overruled, and it is

Further ordered, adjudged, and decreed that judgment be, and the same hereby is, directed for the petitioner against the defendant for the sum of two hundred and forty 00/100 dollars ($240.00), with interest from the 20th day of March, 1902, at six per centum per annum.

(Signed) GEO. C. HOLT, *J.*

As to form assented to

(Signed) HENRY L. BURNETT,
U. S. Attorney, Attorney for Defendant.

(Endorsed:) Decision on demurrer. Filed Dec. 22, 1903.

25 At a stated term of the District Court of the United States held in and for the Southern District of New York, at the post-office building in the borough of Manhattan, in the city of New York, on the 23rd day of December, 1903.

Present: Hon, George C. Holt, district judge.

NEW YORK AND CUBA MAIL STEAMSHIP COMPANY, petitioner,
against
THE UNITED STATES OF AMERICA, DEFENDANT.

This action having been brought on for argument before the Honorable George C. Holt, district judge, at a stated term of this court held on the 14th day of October, 1903, at the post-office building, in the borough of Manhattan, in the city of New York, the petitioner appearing by Curtis, Mallet-Provost & Colt, and the defendant appearing by Henry L. Burnett, United States attorney, and argument having been had upon

the demurrer to the petition, and the said court, on motion of Curtis, Mallet-Prevost & Colt, having filed an order dated the 22nd day of December, 1903, overruling said demurrer and ordering that judge-
26 ment be directed for the petitioner in the sum of two hundred forty 00/100 dollars ($240.00), with interest from the 20th day of March, 1902, at six per cent per annum.

Now, on motion of Curtis, Mallet-Prevost & Colt, attorneys for petitioner, it is

Ordered, adjudged, and decreed, that the said demurrer be, and the same hereby is, overruled, and it is hereby

Further ordered, adjudged, and decreed, that the petitioner recover from the defendant the said sum of two hundred and forty 00/100 dollars, with interest from the 20th day of March, 1902, at six per cent per annum, said interest amounting to twenty-five 32/100 dollars, making in all the sum of two hundred and sixty-five 32/100 dollars.

THOS. ALEXANDER, *Clerk.*

Assented to as to form.
(Signed)
HENRY L. BURNETT,
U. S. Attorney, Attorney for Defendant.

27 United States District Court for the Southern District of New York.

NEW YORK AND CUBA MAIL STEAMSHIP COMPANY, claimant,
vs.
THE UNITED STATES, RESPONDENT.

Now comes the United States, by Henry L. Burnett, United States attorney for the Southern District of New York, and says:

That on or about the 23rd day of December, 1903, this court entered a judgment herein in favor of the claimant, the New York and Cuba Mail Steamship Company, and against the United States, in which judgment and proceedings prior thereunto in this case certain errors were committed to the prejudice of the respondent, the United States, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore the United States, the respondent, prays that a writ of error may issue in this behalf to the Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the record, proceedings, and papers in this case, duly authenticated, may be sent to the said Supreme Court of the United States.

Dated New York, June 1, 1904.

HENRY L. BURNETT,
United States Attorney for the Southern District of New York.

28 The writ of error prayed for in the foregoing petition is hereby allowed.

GEO. C. HOLT,
District Judge.

(Endorsed:) Petition for writ of error. Filed June 3, 1904.

29 *The honorable George C. Holt, judge of the United States District Court for the Southern District of New York, to the New York and Cuba Mail Steamship Company, greeting:*

You are hereby cited and admonished to be and appear before the United States Supreme Court, to be holden in the city of Washington on the 30th day of June, 1904, pursuant to a writ of error filed in the office of the clerk of the District Court of the United States for the Southern District of New York, wherein the New York and Cuba Mail Steamship Company is claimant against the United States, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the city of New York, in the district above named, this first day of June, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States the one hundred and twenty-eighth.

GEO. C. HOLT,
Judge of the District Court of the United States for the Southern District of New York.

(Endorsed:) Citation. Filed June 3, 1904. Due service of a copy of the within is hereby admitted. New York, June 3, 1904. Curtis Mallet-Prevost & Colt, attys. for defdt. in error.

30 United States Supreme Court.

NEW YORK AND CUBA MAIL STEAMSHIP COMPANY, defendant in error,
vs.
THE UNITED STATES, PLAINTIFF IN ERROR.

And now, on the 2nd day of May, 1904, comes the plaintiff in error, by Henry L. Burnett, United States attorney for the Southern District of New York, its attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears:

First. That the judgment aforesaid, in the form aforesaid, given was given for the said defendant in error against the said plaintiff in error.

Second. That judgment was not given for the said plaintiff in error against the said defendant in error.

Third. That the said District Court of the United States for the Southern District of New York held that the facts stated in the complaint herein did constitute a cause of action.

Fourth. That the said District Court of the United States for the Southern District of New York did not hold that the facts stated in the complaint did not constitute a cause of action.

31. Fifth. That the said District Court of the United States for the Southern District of New York overruled the demurrer interposed by the plaintiff in error, and refused to dismiss the petition herein with costs.

Wherefore said plaintiff prays that the order and judgment aforesaid, for the errors aforesaid and other errors in the record and proceedings

aforesaid, may be reversed, annulled, and altogether held for nothing, and that it, the said plaintiff in error, may be restored to all things which it has lost occasioned by said judgment, etc.

HENRY L. BURNETT,
United States Attorney for the Southern District of New York,
Attorney for the Plaintiff in Error.

Office and post-office address: 50 United States Court and Post-Office Building, Borough of Manhattan, city of New York.

(Endorsed:) Assignment of errors. Filed June 2, 1904.

32 (Indorsed:) U. S. District Court, Southern District of New York. New York and Cuba Mail Steamship Co., defendant in error, against the United States of America, plaintiff in error. Clerk's return to writ of error.

(Indorsement on cover:) File No. 19512. S. New York, D. C. U. S. Term No. 116. The United States, plaintiff in error, vs. New York & Cuba Mail Steamship Company. Filed November 3, 1904. File No. 19512.

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